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May 24, 2012

Dennis J. McLerran
Regional Administrator
United States Environmental Protection Agency Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Regional Director McLerran:

I have been retained by the Native Village of Tyonek (NVT) to provide legal assistance related the Chuitna Coal Project that is currently underway. As NVT's counsel, I have received and reviewed the April 27, 2012 letter that you sent to the Tribe regarding EPA's roles and responsibilities regarding the permit. I appreciate the response and look forward to working with Kate Kelly, Director of the Office of the Ecosystems, Tribal and Public Affairs, to finalize and execute the MOU for purposes of coordination and consultation between EPA and NVT.

Short of a government to government meeting between EPA and NVT, I would request specific information related to water quality as it relates to the Chuitna Coal Project and the opportunity to meet with EPA staff to discuss in detail.

Site Specific Criteria

Site specific criteria appears to be the favored method for the mine to ensure that it can "meet" water quality standards. NVT's current concerns/questions regarding site specific criteria include, but are not limited to:

1. The metals being considered;
2. The method to be used (such as water effects ratio), species proposed for use (to ensure species are appropriately sensitive, representative, and ideally, native);
3. The timetable and details about preparation of the site specific criteria; and
4. How the NVT will be engaged as reviewers or commenters on the process.

Baseline Water Quality Data

Regarding baseline water quality information, we seek to identify the past, present, and proposed monitoring plans to ensure that pre-mine data is accurate, precise, and representative.

It is important for any mine to characterize the sites that could reasonably be expected to be

impacted. At the Chuitna sites, NVT is unclear about how baseline water quality data has been, is, and will be developed. We therefore seek information about past monitoring and current/future monitoring plans. Examples include how big an area is being monitored/sampled and what have the sample results been. In addition, it would be helpful to know what time periods baseline monitoring has shown high metals (e.g. springtime in a particular stretch of a creek) and what is being done to ensure that the results are adequate. We want to ensure that baseline data is not developed in a way that erroneously over or underestimates historic contamination by time, location, contaminant concentration, etc. This is necessary to ensure that an occasionally occurring contaminant (that exceeds regulatory limits) is not applied to a larger than appropriate area or during inappropriate times of year.

The NVT has requested background water quality data and not received them. We therefore herein formally request all water quality data relevant to the proposed Chuitna mine. We seek both raw data and reports - so that we can independently evaluate the data's quality and how it is being interpreted and applied.

We further request a detailed the monitoring/data collection plans being used to establish baseline data, including but not limited to such details as locations and times of sampling (full sampling plan description), constituents measured, QA/QC, etc.

Beyond just water quality, the NVT seeks to ensure that water *quantity* is being properly measured and evaluated.

Surface Water

It appears that surface water monitoring is fairly good. But the NVT does not have very much of the existing data - and we request it all so that we can evaluate the data and decisions predicated on that data. We also request the status of past data that will and will not be used. This relates to our understanding that data from 2006 was contaminated (by galvanized equipment) - and our concerns that other data may have been similarly improperly collected or processed.

Groundwater

For discussion purposes, groundwater may be conceptually separated into various layers. The upper layers comprise alluvium near rivers and streams. These may have no chemical contaminant issues except maybe for elevated iron and/or manganese. Below are the coal-bearing layers that may be contaminated by metals associated with the coal. The NVT is concerned that mining of the coal will cause contamination of the upper water layers by waters of the lower, coal contaminants. This could degrade both surface and ground water resources.

The NVT has previously been told that the company installed seven new wells, all in one localized area that needed characterization near a fault zone. These may be artesian, which would limit water production. In any case, it is unclear whether more sampling was done in the rest of the lease area - and whether the wells were developed correctly.

The methods of monitoring and collecting data for water quality are also of concern. Previous contamination of some groundwater samples (by dirt, for example, which can cause the dirt's contaminants to improperly contaminate the sampled water). We seek to ensure that groundwater monitoring used in permitting or oversight will have employed best methods and practices and yield representative data.

Please contact me, or I will contact you, to arrange a meeting to discuss the matter outlined above. Please let me know if you would like further details about the NVT's questions and concerns prior to the meeting.

Yours sincerely,



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Cc: Marcia Heer, Corps of Engineers, Project Manager
Tom Crafford, Alaska DNR
Phil Brna, USFWS
Jamie Stoddard, EPA